

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

**PURPOSE:** This standard practice (SP) describes procedures for avoiding, neutralizing, or mitigating personal conflicts of interest in connection with subcontracts.

**POLICY:** It is the policy of the University to separate the University's interests from the private interests of its employees, and to avoid favoritism and self-dealing in the acquisition of goods and services.

Employees are generally prohibited from making or participating in the making of a decision relating to award, negotiation, or administration of a subcontract if the employee has a financial conflict of interest with regard to the decision.

Note: California State law prohibits University employees from engaging in outside activities that are funded through a University contract. In addition, certain restrictions apply to post-employment contracts with former University employees.

**SCOPE:** This SP applies to all solicitations, subcontracts, and IUTs.

### **DEFINITIONS:**

**Employee** An employee is any individual who is presently employed by the University of California.

**Near Relative** A near relative is the spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a University employee, and step relatives in the same relationship. A near relative also includes a domestic partner of a University employee or a relative of the domestic partner in one of the foregoing relationships.

**Employee-Vendor Relationship** An employee vendor relationship is a relationship in which:

- An employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to the Laboratory; or
- An employee owns or controls more than a 10% interest in any business which proposes for a consideration to lease or sell goods or to provide services to the Laboratory;
- A former employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to the Laboratory; or
- A near relative of an employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to a Laboratory department, when the employee has, in any connection with his or her Laboratory employment, any

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

responsibility for or will be involved in any manner in the department's decision to accomplish or approve the transactions; or

- The near relative of an employee owns or controls more than a 10% interest in a business, which proposes for a consideration to lease or sell goods or to provide services to the Laboratory, when the employee has, in any connection with his or her University employment, any responsibility for or will be involved in any manner in the department's decision to accomplish or approve the transactions.

### **Financial-Conflict of Interest**

A financial conflict of interest exists when an employee has a financial interest in a Laboratory decision as described in the University of California's *Conflict of Interest Code* which can be accessed at:

<http://www.ucop.edu/ogc/coi/econinterest.html>

### **Former Employee**

A former employee is an individual who has retired or separated from the University, was dismissed, or was otherwise formally employed by the University.

### **Interest in a Contract**

An employee has an interest in a contract when the employee knows or has reason to know that any party to the contract is an individual or entity with whom the employee, or near relative of the employee, has engaged in any business transactions or terms not available to members of the public, within 12 months prior to the time when the official action is to be taken, regarding:

- Any investment or interest in real property, or
- The rendering of goods or services totaling \$1,000 or more.

### **Responsible Official**

The Chief Financial Officer is the Responsible Official with the delegated authority to review employee-vendor relationships and to determine whether they constitute unacceptable conflicts of interest.

## **PROCEDURES:**

### **General**

Procurement specialists shall not make or participate in, or permit any employee to make or participate in, the making of a decision relating to award, negotiation, or administration of a subcontract if he or she has or would have a financial interest in the subcontract.

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

### **Employee or Near Relative**

Procurement specialists shall not make or participate in, or permit any employee or former employee to make or participate in, the making of a decision relating to award, negotiation, or administration of a subcontract if he or she has or would have a financial interest in the subcontract.

Procurement specialists shall not obtain goods or services from an employee or a near relative unless they are employed in a teaching or research capacity within the University of California, and in that case only if:

- The procurement does not arise directly out of the individual's activity as a University employee; and
- In the individual's capacity as a University employee, the individual is not in a position to influence the award.

Goods or services may not be purchased when an employee-vendor relationship exists unless:

- The Procurement Manager has made a specific determination that the goods and services are not available from either commercial sources or from within the University, and
- The financial conflict of interest is mitigated to the satisfaction of the Procurement Manager and the Laboratory Conflict of Interest Coordinator and they determine that the purchase is permitted under applicable laws, regulations, and contractual requirements.

### **Former Employee**

The Laboratory may not purchase or lease goods from or contract for services with any former employee who has an employee-vendor relationship, including one who has had teaching or research responsibilities, when:

- Less than two year's time has elapsed since the individual separated from University employment, and the individual has been engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract during the period of employment; or
- Less than one years' time has elapsed since the individual separated from University employment, and the individual has been employed by a department in a policy-making position in the same general subject area as the proposed contract.

Notwithstanding the foregoing, the Laboratory may enter into a contract for services with a retiree immediately following

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

retirement if the retiree did not participate in any way while servicing as an employee in the making of the contract for services.

### **Certification By or Information From Offerors**

All written solicitations shall require the offeror to certify as to whether an employee-vendor relationship exists. A sample certification is provided in Exhibit 3.4.a., *Employee-Vendor Relationships Certification*. All verbal solicitations shall require the offeror to inform the procurement specialist as to whether an employee-vendor relationship exists. An offeror's failure to provide the certification or information will be cause for rejection of the offer.

### **Proposals From Employee-Connected Firms**

If the *Employee-Vendor Relationships Certification* submitted by the apparently successful offeror indicates that there is a potential employee-vendor relationship, the University employee or near relative shall submit a report covering the elements below to the Laboratory Responsible Official. In the event the employee is employed at a University facility other than the Laboratory, the report must still be submitted to the Laboratory Responsible Official.

The report must:

- Indicate the University department(s) and position(s) of the employee involved in the employee-vendor relationship;
- Disclose the interest of the employee or near relative in the quotation or proposal;
- Specify the employee's and/or near relative's relationship to, or interest in, any business organization making the quotation or proposal;
- Indicate whether the employee has any responsibility for or will be involved in any manner in the departmental decision to accomplish or approve the transaction; and
- Certify that no University time, material, equipment, or facilities have been or will be used in connection with any resulting purchase order or subcontract, except as authorized as Government Furnished Property.

The Laboratory Responsible Official shall determine whether the employee-vendor relationship constitutes an unacceptable conflict of interest. If the conflict of interest cannot be mitigated to the satisfaction of the Responsible Official, award may not be made to the offeror in question. Award consideration will then pass to the next apparently successful offeror.

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

### **Participation in Decisions**

All employees are to disqualify themselves from making or participating in making or influencing a decision that the employees know, or have reason to know, will have a material financial effect on their financial interests. The University's *Conflict of Interest Code* applies to the Laboratory and summarizes when and how employees are to disqualify themselves. The *Conflict of Interest Code* is obtainable from the following UCOP Web page:

<http://www.ucop.edu/ogc/coi/econinterest.html>

### **REVIEWS/ APPROVALS:**

#### **Procurement Manager**

The Procurement Manager must review all procurements involving employee-vendor relationships and send them to the Responsible Official to determine whether the purchase is permitted under applicable laws, regulations, and contractual requirements.

#### **Responsible Official**

The Responsible Official must approve award of competitively solicited subcontracts to organizations involving employee-vendor relationships.

### **CLAUSE:**

The *Employee-Vendor Relationships Certification* must be included in all written solicitations where there is a potential employee-vendor relationship.

### **RESPONSIBILITIES:**

#### **Procurement Specialist**

The procurement specialist is responsible for:

- Including the *University's Employee-Vendor Relationships Certification* in all written solicitations where a potential employee-vendor relationship may exist,
- Forwarding affirmative certifications provided by apparently successful offerors to the Responsible Official, and
- Obtaining Procurement Manager approval on all subcontracts to organizations involving employee-vendor relationships.

#### **Procurement Manager**

The Procurement Manager shall:

- Make specific determinations that goods and services are not available from either a commercial source or from within the University on all subcontracts to employees or the near relative on any employee.
- Mitigate financial conflicts of interest and make specific

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 3 Improper Business Practices**

**Subject: 3.4 Personal Conflicts of Interest**

---

determinations that when an employee-vendor relationship exists, the purchase of goods or services are permitted under applicable laws, regulations, and contractual requirements.

### **REFERENCES:**

UC Business and Finance Bulletin BUS 43, Part 7, Vendor Employee Relationships  
Laboratory Regulations and Procedures Manual (RPM), Chapter 2.20 – Outside Employment and Employee Business Activities

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Subject: 3.4 Personal Conflicts of Interest**

**Exhibit: 3.4.a Employee-Vendor Relationships Certification**

---

### **EMPLOYEE-VENDOR RELATIONSHIPS CERTIFICATION**

An affirmative response in the following certification will require the University to evaluate your offer to determine whether a conflict of interest exists. A determination that a conflict of interest exists may necessitate rejection of your offer. The fact that an employee or former employee of the University of California, or near relative of an employee owns, controls, or has a significant financial interest in your organization will not, in and of itself, necessarily be cause for rejection of your offer.

#### **Definitions:**

**Employee:** Any individual who is presently employed by any entity of the University of California, including the Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, or Los Alamos National Laboratory.

**Former Employee:** An individual who has retired or separated from the University of California, was dismissed, or was otherwise formerly employed by the University of California.

**Near Relative:** The employee's spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a University of California employee, and step-relatives in the same relationship. Near relative also includes the domestic partner of a University of California employee and a relative of the domestic partner in one of the foregoing relationships.

**Control:** Having some right to direct or transfer property (even though there exists no actual title to the property, such as trusteeship, power of appointment, or contract) that could be the basis for influence upon the selection or decisions of an organization's management personnel.

**Significant Financial Interest:** Owning or controlling more than 10 percent of the organization.

#### **Certification:**

To the best of my knowledge and belief, an employee or former employee of the University of California or a near relative of an employee [ ] does [ ] does not own, control, or have significant financial interest in the Offeror's organization.

If an employee or former employee of the University of California or near relative thereof does own, control, or have a significant financial interest in the Offeror's organization, identify the employees and the University of California entity where that person is employed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number